

EXHIBIT A



Homeland Security Investigations

Criminal Gangs Investigations Handbook

HSI HB 18-03 / August 13, 2018



**U.S. Immigration
and Customs
Enforcement**

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HSI SAs are uniquely qualified to combat transnational criminal gangs through their broad statutory criminal authorities and civil immigration enforcement authority, which provides SAs with the ability to prevent violent criminal acts by immediately removing dangerous gang members from the communities. These two authorities are complementary and, when utilized properly, HSI's criminal and civil immigration enforcement authorities maximize HSI's ability to positively impact public safety.

2.3 Operation Community Shield

In 2005, ICE initiated Operation Community Shield (OCS), an international law enforcement initiative that combines HSI's expansive criminal and civil immigration enforcement authorities to combat the growth and proliferation of transnational criminal gangs, including street gangs, prison gangs, and outlaw motorcycle gangs, throughout the United States. With assistance from other federal, state, local, and foreign law enforcement partners, OCS helps HSI locate, investigate, prosecute, and, where applicable, remove gang members from communities and ultimately from the United States. (Note: OCS is an umbrella term for the HSI gang programmatic area and the primary platform for NGU initiatives.)

Chapter 3. DEFINITIONS AND GANG MEMBERSHIP IDENTIFICATION

The following definitions are provided for the purposes of this Handbook:

3.1 Gang¹

A gang is a group, club, organization, or association of three or more individuals whose members collectively identify themselves by adopting a group identity which they use to create an atmosphere of fear or intimidation, frequently by employing one or more of the following:

- A. A common name, slogan, or gang moniker;
- B. Identifying sign, symbol, tattoo, or other physical marking;
- C. Style or color of clothing or hairstyle; and/or
- D. Hand sign and/or graffiti.

The gang's primary purpose, in part, is to engage in a pattern of criminal activity; its members engage in criminal activity or in acts of juvenile delinquency that, if committed by an adult, would be crimes, with the intent to enhance or preserve the gang's power, reputation, or economic resources, often through violence or intimidation.

The gang may also possess some or all of the following characteristics:

¹ See Section I of Appendix A for more information.

- A. Members employ rules for joining and operating within the gang;
- B. Members meet on a recurring basis;
- C. The gang provides physical protection for its members from other criminals and gangs;
- D. The gang seeks to exercise control over a particular location or region or it may simply defend its perceived interests against a rival; and/or
- E. The gang has an identifiable structure.

3.2 Transnational Criminal Gang

A transnational criminal gang is defined as one that, in addition to the criteria set forth in Section 3.1 above, possesses at least one of the following criteria:

- A. Foreign-born membership;
- B. Participates in crimes with a cross-border nexus, e.g., narcotics distribution, weapons trafficking, smuggling aliens, etc.; and/or
- C. Communicates with individuals outside the United States to further criminal gang activity impacting the United States.

The citizenship and nationality of gang members/associates are not the sole factors in determining whether a gang is transnational in nature. SAs should prioritize all transnational criminal gangs, utilizing their broad criminal and/or civil immigration enforcement authorities.

3.3 ICE Gang Membership Identification Criteria²

A gang member is an individual who admits to gang membership or has been convicted of violating Title 18, United States Code (U.S.C.), Section 521 or any other federal or state law criminalizing or imposing civil penalties for gang-related activity.

If an individual does not self-admit or have a gang-related conviction, the following criteria should be used, with one of at least two criteria (for gang members and gang leaders) having occurred within the previous 5 years:

A.	^{(b)(7)(E)}
B.	

² See Section II of Appendix A for more information.

C. (b)(7)(E)

D.

E.

F.

G.

H.

I.

J.

K.

(Note: An individual's proclamation denying gang membership should have no bearing on an SA's determination of the individual's gang affiliation.)

3.4 Gang Member

A gang member is an individual who admits to being in a gang or who has a gang-related conviction. A gang member may also be an individual who exhibits two or more of the "ICE Gang Membership Identification Criteria" with at least one having occurred within the previous 5 years (see Section 3.3 above and Section II of Appendix A).

Admission or a gang-related conviction are the only criteria that do not require a second criteria listed in the "ICE Gang Membership Identification Criteria."

(Note: The Investigative Case Management (ICM) code for a gang member is (b)(7)(E))

3.5 Gang Associate

A gang associate is an individual who has exhibited one of the "ICE Gang Membership Identification Criteria" within the previous 5 years (see Section 3.3).

(Note: The ICM code for a gang associate is (b)(7)(E))

3.6 Gang Leader

A gang leader is a gang member who holds a leadership position in the gang and directs the gang's criminal and/or recruitment activity in furtherance of the gang's criminal goals.

(Note: The ICM code for a gang leader is (b)(7)(E))

3.7 No Gang Involvement

For the purposes of this Handbook, if an arrested individual does not exhibit any of the "ICE Gang Membership Identification Criteria," the individual is determined to have no gang involvement (see Section II of Appendix A).

(Note: The ICM code for an individual with no gang involvement is (b)(7)(E))

3.8 Proper Documentation of Gang Membership

Proper documentation of the gang membership criteria met by an individual is critical for judicial matters – criminal and immigration removal proceedings. As law enforcement officers (LEOs), SAs can document an individual as a gang leader, member, or associate, provided that there are articulable facts to substantiate the gang membership criteria that have been met.

If intended for use in immigration or criminal proceedings, SAs should only use documents that are admissible in court, acknowledging that, once admitted, this documentation will be made available to the respondent/defendant and his or her counsel, if represented.

It is the responsibility of the documenting SA to:

- A. Identify the gang membership criteria met by the individual (see Section II of Appendix A)

AND

- B. Provide clear, concise, and articulable facts that substantiate the assignment of each gang membership criteria to the individual.

Since this documentation will be used in criminal and/or immigration removal proceedings, SAs must document each gang membership criteria met and substantiating facts in the corresponding ICM Report of Investigation (ROI) and in the narrative section of DHS Form I-213, "Record of Deportable/Inadmissible Alien," when completing the individual's booking and enrollment into the Enforcement Integrated Database Arrest Graphic User Interface for Law Enforcement (EAGLE). To avoid any discrepancies, it is recommended that the exact same narrative be used for the ICM ROI and the narrative section of DHS Form I-213. Additionally, any information used to justify a criterion (b)(7)(E))

(b)(7)(E) should be included in the investigative case folder, Alien Registration File (A-File), uploaded into the individual's ICM subject record via the "Media" tab, etc.

Although meeting two of the membership criteria is sufficient for an individual to be designated as a gang member, the more criteria are documented in the ICM ROI and the narrative section of DHS Form I-213, the more the government will be able to dispel any potential contest of gang membership designation by individuals.

Examples:

- A. On March 8, 2018, the individual admitted to SA (b)(6); (b)(7)(C) that he or she is a member of La Mara Salvatrucha (MS-13). Additionally, the individual has been seen displaying gang signs/symbols. Please see the attached Facebook photographs.
- B. On April 7, 2018, New Jersey State Police Detective (b)(6); (b)(7)(C) observed the individual flashing gang signs. Additionally, the individual has been arrested with other gang members on two or more occasions. Please see the attached police reports.

In cases involving an allegation of gang membership or association to be presented by the ICE Office of the Principal Legal Advisor's Offices of the Chief Counsel before the U.S. Department of Justice (DOJ)'s Executive Office for Immigration Review (EOIR) Immigration Courts or to be prosecuted by a United States Attorney's Office (USAO) in federal court, it is advisable for SAs to submit a comprehensive DHS Form I-213, ICM ROI, or other written documentation, supported by a Respondent-specific evidence packet.

If SAs are using partner agency information to substantiate gang membership, they must ensure that the partner agency supplying the information provides permission for their documents to be used in criminal and/or immigration removal proceedings. In some instances, a subpoena (grand jury or criminal) must be utilized to enter the gang membership information as evidence in the aforementioned proceedings.

3.9 Gang Training

3.9.1 Street Gang Investigations and Tactical Considerations Course

In coordination with the HSI Academy at the Federal Law Enforcement Training Center (FLETC) in Glynco, Georgia, NGU conducts annual advanced training for SAs and HSI TFOs assigned to Gang/Public Safety/Community Shield Groups.

The Street Gang Investigations and Tactical Considerations (SGITC) course taught at FLETC provides SAs and TFOs with gang identification training, case studies presented by the investigating SAs, prosecutorial strategies, etc. These announcements are sent out via Broadcast Messages. (Note: SAs and TFOs should consult with their local Field Training Program Manager for additional information regarding availability.)

3.9.2 Gang Identification Training

Additional details about gang identification can be found in the “Gang Identification Training” course on the DHS Performance and Learning Management System (PALMS). NGU recommends that all SAs complete this training course.

Chapter 4. AUTHORITIES/REFERENCES

4.1 Customs Officer and Immigration Officer Authorities

The Homeland Security Act of 2002, in conjunction with the Department of Homeland Security Reorganization Plan of November 25, 2002, and the Reorganization Plan Modification for the Department of Homeland Security of January 30, 2003, authorizes HSI SAs to perform the duties provided to them by law and regulation. Through this legal framework and corresponding delegation orders, the law enforcement authorities granted to customs officers (19 U.S.C. § 1589a and Title 19, Code of Federal Regulations (C.F.R.), Parts 161-162), and to immigration officers (8 U.S.C. § 1357 and 8 C.F.R. § 287.5) were transferred to HSI SAs, authorizing them to perform a number of duties, including, but not limited to, conducting investigations of offenses against the United States; conducting searches without warrant at the border, its functional equivalent, or the extended border; conducting inquiries related to alienage and removability; executing and serving search or arrest warrants; serving subpoenas and summonses; administering oaths; making arrests without warrant; requiring and receiving information relating to offenses; and bearing firearms.

4.2 References

- A. ICE Directive (Policy Number: 1048.2), “ICE Lines of Authority,” dated March 10, 2017, or as updated.
- B. ICE Memorandum (Policy Number: 10082.1), “Use of Public and Non-Public Online Information,” dated June 28, 2012, or as updated.
- C. HSI Handbook (HB) 12-03, “Informants Handbook,” dated August 2, 2012, or as updated.
- D. Office of Investigations (OI) HB 08-04, “Undercover Operations Handbook,” dated April 14, 2008, or as updated.
- E. OI HB 08-02, “Case Management Handbook,” dated February 1, 2008, or as updated.

Appendix A

DEFINITIONS AND GANG MEMBERSHIP IDENTIFICATION

I. Gang

(Note: The case law referenced below is offered as a resource related to some factors considered by courts in gang-related prosecutions. Cases should not be cited or quoted directly without confirming that the case is published and precedential according to rules of the governing jurisdiction and has not been impacted by a subsequent court decision, legislation, etc.)

A gang is a group, club, organization, or association of three or more individuals whose members collectively identify themselves by adopting a group identity which they use to create an atmosphere of fear or intimidation, frequently by employing one or more of the following:

(b)(7)(E)



(b)(7)(E)

The association's primary purpose, in part, is to engage in a pattern of criminal activity; its members engage in criminal activity, or acts of juvenile delinquency that, if committed by an adult, would be crimes, with the intent to enhance or preserve the gang's power, reputation, or economic resources, often through violence or intimidation.

(b)(7)(E)

(b)(7)(E)

II. ICE Gang Membership Identification Criteria

A gang member is an individual who admits gang membership or has been convicted of violating 18 U.S.C. § 521 or any other federal or state law criminalizing or imposing civil penalties for gang-related activity.

If an individual does not self-admit or have a gang-related conviction, the following criteria¹ should be used, with one of at least two criteria (for gang members and gang leaders) having occurred within the previous 5 years:

(b)(7)(E)

¹ The criteria listed are the “ICE Gang Membership Identification Criteria,” which are also referenced in Section 3.3 of the Handbook.

(b)(7)(E)

(b)(7)(E)

(Note: An individual's proclamation denying gang membership should have no bearing on an HSI SA's determination of the individual's gang affiliation.)